

Serial No. 09/827,031  
Docket No. 40655.1000

**REMARKS**

Applicants reply to the Final Office Action dated September 22, 2005 within two-months. Thus, Applicants request an Advisory Action, if necessary. Claims 21-32 were pending in the application and the Examiner rejects claims 21-32. Applicants add new claim 33. Support for the amendments and new claim may be found in the originally-filed specification, claims, and figures. No new matter has been introduced by these amendments. Reconsideration of this application is respectfully requested.

**Rejection under 35 U.S.C. § 102(a)**

The Examiner rejects claims 21-26, 28-30 and 32 under 35 U.S.C. § 103(a) as being anticipated by Shoman et al., U.S. Patent No. 6,584,451 B1 ("Shoman") in view of Halbert et al., U.S. Patent No. 6,101,484 ("Halbert"). Applicants respectfully traverse this rejection.

In general, Shoman discloses a system for aggregating the buying power of individual buyers in order to obtain volume discounts on goods and services. The Shoman system includes a web interface to enable sellers to post products and services for sale as well as an indication of a minimum low price they are willing to accept. Buyers interact with the system to indicate an interest in certain products and services along with an indication of a maximum price they are willing to pay. The Shoman system then finds the largest quantity at the smallest price for desired goods and determines if a deal can be completed between the sellers and buyers.

The Examiner correctly notes that Shoman "does not explicitly disclose that the consumer-defined purchase rules are stored in a database" (page 4, paragraph 1). However, the Examiner asserts that Halbert does disclose the above step of storing consumer-defined purchase rules in a database.

Halbert generally discloses a market equilibrium management system for selling goods and services through an online buying group. According to Halbert, in order to join a buying group, a consumer must indicate a maximum buying price for a product or service. The maximum buying price essentially locks the consumer into making the purchase if a seller is able to meet the buying price. The binding purchase offer is guaranteed by the consumer's credit card. The buyer's information, including the binding purchase offer, is then stored in a database. The Halbert system then collects a group of buyers from the database with binding purchase offers for the same products or services. From this data, the Halbert system is able to create real-

Serial No. 09/827,031  
Docket No. 40655.1000

time yield management information that can be provided to sellers to recommend a lower price per unit.

Both Shoman and Halbert disclose systems that enable groups of buyers to define a price at which they would be willing to pay for a particular good and/or service. According to both references, the offer to buy inherently includes two parameters; a purchase price and an item identifier. Therefore, both disclosures are price centered wherein the price is the determining factor of whether or not a commerce transaction will occur. This being the case, a buyer using the systems of either Shoman or Halbert would not be able to make a purchase based on any criteria other than price. For example, a buyer may be willing to make a purchase from Merchant A at a price that is actually higher than the lowest price offered by Merchant B. This purchase decision may be driven by secondary conditions (e.g., Merchant A is a local and trusted vendor).

Moreover, neither Shoman nor Halbert disclose a mechanism whereby the buyer can define a threshold, wherein a merchant offering a product or service for sale may be selected as the provider, even if a defined purchase rule is not met, as long as the offer falls within a buyer-defined threshold. As such, neither Shoman, Halbert, nor any combination thereof, disclose or suggest at least, "accepting a bid from said vendor to provide said item to a consumer associated with said subset based on an ability of said vendor to accommodate within a consumer defined threshold said consumer defined purchase rules of said subset," as similarly recited by independent claims 21 and 32.

Dependent claims 22-26 and 28-30 variously depend from independent claim 21. As such, dependent claims 22-26 and 28-30 are differentiated from the cited references for at least the reasons described above, as well as in view of their own respective features.

The Examiner next rejects claims 27 and 31 under 35 U.S.C. § 103(a) as being anticipated by Shoman in view of Halbert as applied to claim 21, and in further view of Walker et al., U.S. Patent No. 5,794,207 ("Walker"). Applicants respectfully traverse this rejection. Walker also does not disclose a mechanism whereby the buyer can define a threshold, wherein a merchant offering a product or service for sale may be selected as the provider, even if a defined purchase rule is not met, as long as the offer falls within a buyer-defined threshold. Applicants assert that claims 27 and 31 depend from independent claim 21, so claims 27 and 31 are

**BEST AVAILABLE COPY**

Serial No. 09/827,031  
Docket No. 40655.1000

differentiated from the cited references for at least the reasons described above, as well as in view of their own respective features.

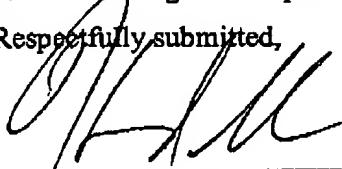
**New Claim 33**

Applicants assert that new claim 33 depends from independent claim 21, so claim 33 is differentiated from the cited references for at least the reasons described above, as well as in view of its own respective features.

**Conclusion**

In view of the above remarks and amendments, Applicants respectfully submit that all pending claims properly set forth that which Applicants regard as their invention and are allowable over the cited references. Accordingly, Applicants respectfully request allowance of the pending claims. The Examiner is invited to telephone the undersigned at the Examiner's convenience, if that would help further prosecution of the subject Application. Applicants authorize and respectfully request that any fees due be charged to Deposit Account No. 19-2814.

Respectfully submitted,



Howard Sobelman  
Reg. No. 39,038

Dated: October 24, 2005

**SNELL & WILMER L.L.P.**  
400 E. Van Buren  
One Arizona Center  
Phoenix, Arizona 85004  
Phone: 602-382-6228  
Fax: 602-382-6070  
Email: hsobelman@swlaw.com

**BEST AVAILABLE COPY**